



November 14, 2014

Honorable Andrew L. Carter, Jr.
United States District Judge
Southern District of New York
40 Foley Square, Room 435
New York, New York 10007
ALCarterNYSDChambers@nysd.uscourts.gov

Re: *A.A. o/b/o J.A. v. New York City Dept. of Educ.*, 14 CV 8483 (ALC)

Dear Judge Carter:

I am the attorney at Partnership for Children's Rights who represents the Plaintiffs in the above referenced appeal brought pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"). The parties write jointly, and in light of Your Honor's individual practice rule 3(B) ("Initial Case Management Conference"), concerning the matters set forth below.

First, please find attached to this letter a proposed order that directs the State Education Department's Office of State Review ("OSR") to send the certified record on appeal to Plaintiffs' counsel and to allow Plaintiffs' counsel to file the record under seal with the Court.

As noted above, this case is an appeal pursuant to the IDEA. The IDEA states that the Court "shall receive the records of the administrative proceedings," 20 U.S.C. § 1415(i)(2)(C)(i), but does not specify the mechanism to be used to provide the Court with the administrative record. One mechanism that has proved effective in recent cases has been for counsel to obtain the certified record from the OSR and to provide a copy to opposing counsel, and file such record with the Court. The parties therefore jointly request that the Court issue an order: (1) directing the OSR to provide a certified copy of the administrative record to Plaintiffs' counsel and, (2) in order to protect the privacy of Plaintiff, J.A., directing that such record be filed under seal.

Second, the parties jointly propose the following briefing schedule for the Court's review and approval:

Plaintiffs' motion for summary judgment: January 14, 2014

Defendant's cross-motion and opposition: February 27, 2014

Plaintiffs' opposition and reply: March 13, 2014

Defendant's reply: March 27, 2014

In considering this proposed briefing schedule, please note that the parties will be relying on the record of the administrative proceedings below in making cross-motions for summary judgment and do not anticipate engaging in any discovery. Therefore, the parties are prepared to move directly into motion practice once the OSR provides the certified administrative record.

While IDEA cases are typically resolved via cross-motions for summary judgment, the Second Circuit has explained that "a motion for summary judgment in an IDEA case often triggers more than an inquiry into possible disputed issues of fact. Rather, the motion serves as a pragmatic procedural mechanism for reviewing a state's compliance with the procedures set forth in [the] IDEA and determining whether the [educational program offered by the school district] is reasonably calculated to enable the child to receive educational benefits." *M.H. v. New York City Dep't of Educ.*, 685 F.3d 217, 225-6 (2d Cir. 2012) (internal quotations omitted). "Thus, though the parties in an IDEA action may call the procedure 'a motion for summary judgment,' the procedure is in substance an appeal from an administrative determination, not a motion for summary judgment." *Id.* Accordingly, the Second Circuit has explicitly held that 56.1 statements are not required in IDEA cases. *T.Y. v. New York City Dep't of Educ.*, 584 F.3d 412, 417-18 (2d Cir. 2009).

The parties believe that a 56.1 statement (whether joint or separate) would be of limited value in resolving the issues in the instant case and that a robust statement of facts in the parties' respective memoranda of law would be more helpful to the Court. The parties therefore respectfully request that in lieu of 56.1 statements, that each side be permitted to file an initial moving brief of 35 pages in this matter, instead of the 25 set forth in Your Honor's rules. The parties request that Plaintiffs' opposition and reply brief and Defendant's reply brief each be limited to 25 pages.

Finally, given the nature of this case, and because the parties do not have any outstanding issues at this time, we respectfully request that the court conference typically scheduled pursuant to Your Honor's individual practice rule 3(B) be waived.

Thank you for your consideration of these joint requests.

Respectfully submitted,



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Enclosure (proposed order)

cc: William B. Scoville, Jr., Esq. (attorney for Defendant / by ECF)

Honorable Frank Maas (by U.S. Mail)
Chief U.S. Magistrate Judge
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